IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1617 of 1996
And

Special Criminal Application No.1640 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos.1 to 5 - No.

CHETANKUMAR KANAIYALAL SHAH

Versus

STATE OF GUJARAT

And

Bhupendra Parshottamdas Mehta

Versus

The State of Gujarat.

Appearance:

MR KJ SHETHNA for Petitioners

MR.ST MEHTA,ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/02/97

ORAL JUDGEMENT

These two petitions arise out of an action initiated by the learned Joint Judicial Magistrate, First Class, Gandhinagar, under section 345 of the Code of Criminal Procedure against an advocate and the litigant whom the said advocate represented in the proceeding pending before the said learned Joint Judicial Magistrate, First-Class, Gandhinagar(hereinafter referred to as 'the learned Magistrate').

The petitioner in the Special Criminal Application No.1617 of 1996 is an advocate who represented the opponent in two proceedings namely Criminal Misc.Application No.59/95 and Criminal Misc.Application No.266/94 pending before the learned Magistrate. The petitioner in Special Criminal Application No.1640 of 1996 is the litigant whom the learned Advocate represented in the above-referred two Miscellaneous applications. Said applications were posted for hearing before the learned Magistrate on 22nd November, 1996. It appears that some altercation took place between the learned Magistrate and the petitioners herein regarding granting of time in the above two applications which led to the notices which are impugned herein.

Learned Magistrate was of the opinion that petitioners had offered an insult to the court in course of the proceedings which were pending before him and had caused obstruction in the administration of justice and had thus committed an offence under section 228 of the Indian Penal Code. He, therefore, on 26th November, 1996 issued notices to both the petitioners narrating the incident that took place on 22nd November, 1996 and calling upon them to show cause why an action should not be taken against them under section 345 of the Code and why should they not be punished under the said provision. It is these notices, the validity of which is called in question, in these petitions.

Learned Advocte Mr.Shethna has appeared for the petitioners and has contended that as referred to in the notices impugned herein the learned Magistrate has invoked the powers vested in him under section 345 of the Code. He has submitted that in the event of commission of an offence under section 228 of the Indian Penal Code in view or presence of the court of the learned Magistrate, the learned Magistrate could have caused the offender to be detained into custody, taken cognizance of the offence and after giving the offender a reasonable opportunity of showing cause why he should not be punished, sentenced the offender to fine not exceeding Rs.200/- and in default of payment of fine to undergo

Simple Imprisonment for a period which may extend to one month. However, all this should have been done on the same day before the rising of the court. In support of his contention, he has relied upon the judgment of the Bombay High Court in the matter of Shankar Krishnaji Gavankar v. Emperor (AIR 1942 Bombay 206).

In the said matter, the court was confronted with a similar issue. The Court was considering the punishment imposed upon the offender for offence committed under section 228 of the Penal Code two days after the date of the commission of the offence. The court held that all the formalities ought to have been completed on the same day, and the order of punishment ought to have been made on the same day. The order of punishment made two days after the date of commission of offence being contrary to the provisions of law was quashed and set aside. Mr.Shethna has also relied upon the judgment of the Supreme Court in the matter of State of U.P. vs. Singhara Singh and others (AIR 1964 S.C.358). The court in the said matter has held that, "if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed." Mr.Shethna has, therefore, submitted that the impugned notices issued under section 345 of the Code three days after the date of the commission of alleged offence cannot be said to be a valid notice and the action thus initiated under section 345 of the Code ought to be declared to be without jurisdiction.

The learned Additional Public Prosecutor Mr.S.T.Mehta has contested these petitions. He has submitted that the provisions contained in section 345 of the Code are directory and not mandatory. The court may or may not take action in the manner in which it is prescribed. I am afraid I cannot accept the contention raised by Mr.Mehta. It is true that in the said section the words used are "may" and not "shall". However, the word "may" has to be read in the context of the provisions made in that section. The court may or may not take action under section 345 in the cases where it finds that the offence has been committed under either of the provisions of the Penal Code referred to in that section. However, if the court chooses to take action against the offender it has to be taken in the manner in which it is prescribed. The action taken under the said section in any manner other than the one which is prescribed under the said section cannot be held to be

valid or legal. In the present case, it is undisputed that the action under section 345 has been initiated by issuing notices three days after the date of the incident. It cannot be said that the learned Magistrate has initiated action under section 345 in the manner in which it was required to be done. The said notices, therefore, being violative of the provisions of section 345 of the Code are required to be quashed and set aside. The notices impugned herein, Annexure-B and Annexure-A to the above petitions respectively are quashed and set aside.

Mr.Shethna states that after the issuance of the impugned notices the proceedings had proceeded against the petitioner in Special Criminal Application no.1640 of 1996 and an order of conviction has been made against him on 30th November, 1996 and an appeal being Criminal Appeal No.1 of 1996 preferred against the said order of conviction, is pending before the learned Sessions Judge,Ahmedabad(Rural).

In view of above decision, I do not consider it expedient to enter into the facts leading to the impugned notices or the present petitions. The petitions are allowed accordingly. Rule is made absolute.

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